

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 16361 of 2006
Date of decision : 10-11-2006

Executive Engineer, Sidhmukh Division No.4,
Hisar.

... Petitioner

Versus

The Presiding Officer, Labour Court,
Hisar & another

... Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. D.S.Nalwa, Addl. A.G. Haryana,
for the petitioner

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ARVIND KUMAR,J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 14-2-2006 Annexure P-1, vide which the learned Labour Court, Hisar, has set aside the order terminating the services of respondent No.1-workman and ordered his reinstatement with continuity of service along with 50 per cent back wages from the date of demand notice dated 15.2.2001 till publication of award and full back wages thereafter till reinstatement.

Respondent No.2-workman, on 1.8.1999, joined the service of the petitioner-department as Beldar on daily-wage basis. His termination from service with effect from 30.9.2000 gave rise to an industrial dispute. He alleged that his services were terminated illegally, in violation of Section 25-F of the Industrial Disputes Act,1947 (in short, the Act). On the contrary, the stand of the petitioner-department was that the

workman was engaged temporarily on daily-wage basis and thereafter, he left the work of his own after 30.9.2000.

In support of their respective case, evidence was led by the parties.

The learned Labour Court on appreciation of oral as well as documentary evidence adduced on record, vide the impugned award, held that the services of the workman were terminated illegally in violation of Section 25-F of the Act, and passed the impugned award in the manner indicated above. Hence, the present writ petition by the department.

We have heard the learned Additional Advocate General, Haryana, and have also gone through the paper-book carefully. Petitioner-department on the basis of one payment bill, Exhibit M-2 (before the Labour Court) argued that the respondent-workman had worked upto the month of December, 2000, and has questioned the completion of 240 days of the respondent-workman preceding 12 months from this date. This plea does not detain us any longer. A bare perusal of the written statement, filed by the department, to the claim statement, reveals that there were no such pleadings before the Labour Court. In absence of any such pleadings having been raised before the Labour Court, we are not persuaded to entertain the same. Further, a perusal of the award shows that it was nowhere suggested to the respondent-workman in cross-examination that he had worked even in December 2000. The only suggestion in fact had been put to him that he had abandoned his job after 30.9.2000 i.e. the date which the respondent-workman claims to be the date of termination of his services. The learned Labour Court has also rightly noticed that the copies of the muster-rolls and payment bills of the previous month bear the signatures of respondent-workman though such signatures on the payment bill, Exhibit M-2, are conspicuously missing. In this back-drop, the labour Court has rightly rejected the said plea of the petitioner-department.

Coming to the plea of abandonment, the question whether the employee has abandoned his service or not, is a question which is required to be resolved in the light of facts and circumstances of each case. Mere assertion of plea of abandonment would not suffice. Once the petitioner-department has raised the plea of abandonment, which on the other hand has been categorically denied by the workman, the onus lies heavily on the

petitioner-department to prove the said plea by leading cogent and convincing evidence but nothing of the sort has been done by the petitioner-department in the instant case. Rather, MW-1 M.S.Pannu, management-witness, has frankly conceded that there is absolutely no mention in the record regarding abandonment of job by the workman. Thus, the learned Labour Court has rightly rejected the plea of abandonment raised by the petitioner-department. On the other hand, a bare perusal of the impugned award shows that the attendance details, Exhibit M-1, established that the workman had worked for 243 days preceding 12 months from the date of his termination i.e. 30.9.2000. Therefore, the provisions of Section 25-F of the Act *ibid* were to be complied with. Admittedly, there was non-compliance of mandatory provisions of Section 25-F of the Act. Thus, in these circumstances, the conclusion of the Labour Court that it is not a case of abandonment, rather the services of the workman were terminated in violation of the provisions of Section 25-F of the Act, does not call for any interference.

Learned State counsel has next argued that the respondent-workman has not adequately proved the plea of remaining idle during the remaining period and as such, grant of back-wages by the Labour Court to the extent of 50 per cent is excessive. The contention is again meritless. In Noida and another v. Hari Dutt, 2006 SCCC (L&S) 1083, the Labour Court had directed payment of back-wages of 50 per cent which were raised to full back wages by the High Court. The Hon'ble Supreme Court set aside the decision of the High Court and confirmed the award of the Labour Court.

In Allahabad Jal Sansthan v. Daya Shankar Rai and another, 2005(5) SCC-124, it has been held by the Hon'ble Supreme Court that it is necessary to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered, but the golden mean may be arrived at, and opined that interest of justice would be subserved if the workman is awarded 50 per cent of back-wages. Therefore, applying the norms laid down by the Hon'ble Apex Court, the grant of 50 per cent back-wages in this case is not excessive in any manner.

No other point has been urged.

In view of what has been stated above, we are of the opinion that the learned Labour Court has rightly answered the reference. We do

not find any infirmity with the award passed by the Labour Court which is just and reasoned. Accordingly, the petition being without any merit is dismissed in limine.

(ARVIND KUMAR)
JUDGE

November 10, 2006
JS

(J. S. NARANG)
JUDGE